IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY THE SEVENTH DAY OF DECEMBER,

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT APPEAL NO : 1640 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 06/10/2004 in WP NO : 9575 OF 2004 on the file of the High Court.)

Between:

Contec Syndicate Private Ltd, Rep. by its Managing Director
Sri V. Nagabhushana Rao S/o V.S.N. Benarji, Aged 32 yrs, R/o 905, Street No.8, F-24, Sainath Apartments, Venkataramana Ciolony, Khairatabad, Hyderabad.

..... APPELLANT

AND

1 The Government of A.P. rep.by its Special Chief Secretary, Panchayat Raj, Secretariat, Hyderabad.
2 The Chief Engineer, (R.W.S), Panchayat Raj, SRTGN Bhavan, Erramanzil Colony, Hyderabad.
3 The Superintending Engineer (RWS), Panchayat Raj, Vijayawada, Krishna District.
4 M/s V.B. Constructions, Rep. by its Managing Partner Sri B. V. Balarama Raju, 8-2-293/K/90, Kamalapuri Colony, Phase - III, Hyderabad - 73.

RESPONDENT(S)

Counsel for the Appellant:MR E.Manohar, Senior Advocate for Mr T. RAJENDRA PRASAD

Counsel for the Respondent No.1 to 3: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for respondent No.4: Mr D.Prakash Reddy for Mr S.Nageswara Reddy

The Court made the following JUDGMENT:

(per Hon'ble Sri Devinder Gupta, the Chief Justice)

Writ petitioner is the appellant and is aggrieved by the order of the learned single Judge dismissing its writ petition. The petitioner had questioned the action of the respondents in accepting the tender of the fourth respondent in response to the tender notice dated 19.2.2004 for award of work of improvements to the existing summer storage tanks, pipe lines, sumps and OHSR etc., for Avanigadda Drinking Water Project in Krishna District under PWS scheme with consequential relief to accept the writ petitioner's bid and to award work to him. Learned single Judge held that there was nothing wrong in the action of the respondents in accepting the technical bid of the fourth respondent and award of work to it.

2. Learned counsel for the writ petitioner/appellant has reiterated before us the same grounds which were urged before the learned single Judge that the third respondent had strictly, in consonance with the terms and conditions of the tender, rightly evaluated the technical bids and observed while submitting his report on opening of the technical bids that the tender of the fourth respondent on four counts was not qualified to open its price bid. It was urged that the second respondent was not justified in over-ruling the said observation of the third respondent. The over-ruling of the objection was on irrelevant considerations. The decision of the tender committee in opening the price bid of the fourth respondent was, thus, not justified.

3. Admittedly, it was an open on-line tender. The procedure for bid submission required that the bidders desirous of participating in 'e' procurement have to submit technical bids and price bids in standard formats prescribed in the tender documents displayed at 'e' market place. The bidder should upload the scanned copies of all the relevant certificates in support of technical bids and shall sign all statements/documents/ certificates uploaded by him owning responsibility for their correctness. The downloaded tender conditions, inter alia, laid down; i) to enclose a certificate issued by the Engineer-in-charge of the State/Central Government Departments/ Undertakings not below the rank of

Executive Engineer or equivalent and counter-signed by the next higher authority; and ii) the tenderer is subject to be disqualified if he is found to have misled or furnished false information in the forms/statements/certificates submitted in proof of qualification requirements or record of performance such as abandoning of work not properly completed in earlier contracts, inordinate delay in completion of the works, litigation history and/or financial failures and/or participated in the previous tendering for the same work and has quoted unreasonable high bid price. The conditions also notified that any other condition regarding receipt of tenders in conventional method appearing in the tender documents be treated as not applicable.

4. The Superintending Engineer while preliminarily examining the technical bids noticed four lacunae in the technical bid of the fourth respondent viz., i) the uploaded certificates are not attested by the Gazetted officer; ii) two experience certificates in respect of the works are not counter-signed by the Superintending Engineer, whereas remaining experience certificates are counter-signed by the Superintending Engineer; iii) suppression of information by the fourth respondent as regards the works for which tenders were already submitted. In that respondent No. 4 was found to have given 'nil' statement. As per the Superintending Engineer, the fourth respondent had submitted tender for C.P.W.S. Scheme to Gollapalem and other habitations in East Godavari District on 8.2.2004 and the same was got confirmed by the Superintending Engineer through telephone from the Superintending Engineer, RWS Circle Office, Kakinada; and iv) The check slip to accompany the tender was not uploaded. The Superintending Engineer, thus, submitted the preliminary evaluation to the Chief Engineer, Rural Water Supply, Hyderabad opining that the tender of the fourth respondent is not qualified to open its price bid. Technical bid of the petitioner/appellant was found to be in order. Its price bid was opened and the papers were forwarded to the Chief Engineer.

5. The Chief Engineer on receipt of the report on the preliminary evaluation of technical and financial bids from the Superintending Engineer in his turn made appropriate verifications of the technical bids of the writ petitioner as well as the fourth respondent. He dealt with each of the objections as noted by the Superintending Engineer as regards the technical bid of the fourth respondent. By a reasoned order he over-ruled the opinion of the Superintending Engineer.

As regards the first objection, he pointed out that under Clause 9.1 (f) (Vol. I) of the Tender Documents and as per the tender conditions, the certificates should be self-attested only and need not be attested by the Gazetted Officer. Therefore, the uploaded certificates were not required to be attested by the Gazetted Officer and self-attestation was sufficient. As regards the objection of experience certificate for the two works that the same were not counter-signed by the Superintending Engineer, reference was made to Clause 9.4 (Vol. I) of the tender conditions that as per the Superintending Engineer's statement A.V. Nagaram work experience was considered for work on hand for 'B' value and as per clause 9.2 of tender conditions such experience work certificate with self-attestation was sufficient. In other words, counter signatures of the Superintending Engineer were not required since the Superintending Engineer in the statement had considered the work in hand for 'B' value. As regards second work, "C/o. OHSR at K.P. Palem and Modi", the certificate admittedly was not counter-signed by the Superintending Engineer. The Chief Engineer observed that this work experience was not considered for physical and financial requirement, and therefore irrespective of the fact that the certificate was not counter-signed by the Superintending Engineer this objection was immaterial. As regards third objection regarding suppression of material facts, needless to add that the tender which had been submitted by the fourth respondent for C.P.W.S. Scheme to Gollapalem and other habitations in East Godavari District on 8.2.2004 was already cancelled on 24.2.2004, which was the only objection raised by the Superintending Engineer. According to the fourth respondent, it was re-submitted pursuant to fresh notice simultaneously along with the fresh bids submitted for the works in question and since it was simultaneous submission of bid there was no necessity for furnishing any information and moreover supplying information was only to find out the bidder's capacity and the Chief Engineer while evaluating the bidder's capacity had taken note of the bid submitted by the fourth respondent for the said work of C.P.W.S. Scheme to Gollapalem and other habitations in East Godavari District. Third objection was over-ruled by the Chief Engineer. The Chief Engineer as regards fourth objection observed that as per the tender condition check slip is required only for conventional type of tender and the downloaded information it was specifically mentioned that the other conditions in conventional methods appearing in the tender documents are not applicable.

6. The Chief Engineer on verification of the technical bids submitted the papers before the tender committee for its examination. The tender committee, thus, examined and reviewed the tenders for the scheme in question and accepted the reasons assigned by the Chief Engineer for technically qualifying the tender of the fourth respondent and opined that the reasons given by the Superintending Engineer are not in consonance with the tender conditions. Accordingly, the tender committee asked the Chief Engineer to request C1 India Limited the possibility of opening the price bid of fourth respondent. On opening of the price bid of the fourth respondent, its tender was found to be the lowest and acceptable. Thus, the petitioner/appellant was not awarded the work.

7. All these aspects were duly considered by the learned single Judge. Nothing further was argued before us by the learned counsel for the appellant. In tender matters, the scope of judicial review is very much limited. It was not demonstrated before us that the decision of the tender committee is in any manner vitiated. There are no mala fides alleged. The view taken by the tender committee is the possible view which can be taken on the tender conditions applicable. We have already pointed out that it was on-line tender and the bidders participated in 'e' procurement after uploading and scanning copies of relevant documents. Rightly the Chief Engineer referred to Clause 9.4 (f) that all enclosed documents with tender schedule should be self-attested. Only the experience certificate was required to be certified by the Engineer-in-charge and counter-signed by the Superintending Engineer and that also with respect to the completed works and not for the works, which were already in progress for which the Superintending Engineer had already made evaluation and taken the same into consideration.

8. We do not find any illegality or irregularity in the order passed by the learned single Judge in dismissing the writ petition and for that reason we find no ground to interfere with the said order. The writ appeal is, therefore, dismissed. No costs.

December, 2004.

Sarfraz

To

1. The special Chief Secretary, Government of A.P., Panchayat Raj, Secretariat, Hyderabad.

2. The Chief Engineer, (R.W.S.), Panchayat Raj, SRTGN Bhavan, Erramanzil Colony, Hyderabad.

3. The Superintending Engineer (RWS), Panchayat Raj, Vijayawada, Krishna district.

4. the GP for Panchayat Raj, High Court Buildings, Hyderabad (OUT).

5. Two CD copies.